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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/236,373 01/25/99 BUHLER

B 71-673-1

QM02/0601

EXAMINER

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PRICE, C

ART UNIT	PAPER NUMBER
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3743

*4*

DATE MAILED:

06/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/236,373</b>	Applicant(s), <b>BUHLER</b>
	Examiner <b>CARL D. PRICE</b>	Group Art Unit <b>3743</b>

Responsive to communication(s) filed on Jan 25, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-26 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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**Reissue Application**

***Written Consent of all Assignees***

1. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

**A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.**

***Ownership Interest***

2. This application is objected to under 37 CFR 1.172(a) as the assignee has not established its ownership interest in the patent for which reissue is being requested. An assignee must establish its ownership interest in order to support the consent to a reissue application required by 37 CFR 1.172(a). The assignee's ownership interest is established by:

- (a) filing in the reissue application evidence of a chain of title from the original owner to the assignee, or
- (b) specifying in the record of the reissue application where such evidence is recorded in the Office (e.g., reel and frame number, etc.).

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The submission with respect to (a) and (b) to establish ownership must be signed by a party authorized to act on behalf of the assignee. See MPEP § 1410.01.

**An appropriate paper satisfying the requirements of 37 CFR 3.73 must be submitted in reply to this Office action.**

3. This application is objected to under 37 CFR 1.172(a) as the assignee has not established its ownership interest in the patent for which reissue is being requested. An assignee must establish its ownership interest *in order to support the consent to a reissue application required by 37 CFR 1.172(a)*. The submission establishing the ownership interest of the assignee is informal. There is no indication of record that the party who signed the submission is an appropriate party to sign on behalf of the assignee. 37 CFR 3.73(b).

**A proper submission establishing ownership interest in the patent, pursuant to 37 CFR 1.172(a), is required in response to this action.**

***Information Disclosure Statement***

4. Receipt of the INFORMATION DISCLOSURE STATEMENT, Paper number TWO is acknowledged. An initialed copy of form PTO-1449 is enclosed.

***Offer to Surrender***

5. This reissue application was filed with the required offer to surrender (paper number Three) the original patent or, if the original is lost or inaccessible, an affidavit or declaration to

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that effect. **The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.**

*Drawings*

6. The Drawings submitted by applicant have not been designated as formal or informal. Applicant may request transfer of the formal approved drawings from the parent patent file. Otherwise formal drawings should be submitted for review by the Draftsperson.

*Defective Declaration*

7. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

8. Claims 1-26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

9. Claims 1-26 are rejected under 35 U.S.C. 251 as being improperly broadened in a reissue application made and sworn to by the assignee and not the patentee.

10. The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese '570 in view of Falk et al.

Japanese '570 discloses the invention substantially as set forth in the claims with possible exception to the torch head having separate fuel gas and oxygen supply passages therein and control means on the torch head and associated with each of the fuel gas and oxygen passages to selectively block the flow therethrough. Japanese '570.

Japanese '570 shows a torch head and handle (5,7,17) having separate fuel gas and oxygen supply passages therein (not shown) and control means (9,10) on the torch head and associated with each of the fuel gas and oxygen passages to selectively block the flow therethrough. Japanese '570 includes a tip stem (6) communicating with the fuel and oxygen passages and connected to an arcuate shaped tip head (Figure 10) extending through more than 240 degrees and having at least a first, second and third angularly spaced orifices (51) which open toward a common point (applicant should note that the gas streams (29) of ports (51), for example, are directed to a common point offset from the plane in which the arcuate tip head lies).

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Falk et al teaches, from the same torch head field of endeavor as Japanese '570, forming a integral torch head and handle tube (11) to include separate fuel gas and oxygen supply passages (21,25) therein and control means (40,55) on the torch head and associated with each of the fuel gas and oxygen passages to selectively block or control the flow therethrough. Falk et al includes a tip stem (29) communicating with the fuel and oxygen passages and connected to an tip head (34) having a flame orifice.

In regard to claims 1-26, for the purpose of forming an integral torch head and handle tube, it would have been obvious to one with ordinary skill in the art to modify the torch head and handle of Japanese '570 to include a integral torch head and handle tube having separate fuel gas and oxygen supply passages therein and control means on the torch head/handle tube associated with each of the fuel gas and oxygen passages to selectively block or control the flow therethrough. In regard to claims 1-26, since the number, relative orientation, spacing, burner arc length, etc. would depend on numerous design concerns such as the such as he size or circumference of an article to be heated, the type of fuel burned, the amount of heat to be applied to the article heated, the flame size, the desired distribution of heat over the heated surface, etc., to space the orifices at an angle of 100 degrees, an angle of 120 degrees, less than about 280 degrees, at least about 245 degrees, attaching the stem at a point midway between a second and third orifice, etc. can be viewed as nothing more than mere mattes of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

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*Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

German '726, Japanese '784, Granfield, Rockefeller, Japanese '622 all show arcuate torch tips attached to torch heads.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Price whose telephone number is (703) 308-1953.

C.P.  
May 19, 2000



Carl D. Price  
Primary Examiner